

WATER QUALITY BOARD—REGULATION OF DISCHARGES

CHAPTER 644

H. B. No. 1560

An Act relating to administration and regulation of certain discharges by the Texas Water Quality Board; amending Sections 21.003, 21.036, 21.038, 21.064, 21.065, 21.079, 21.094, 21.252, 21.253, 21.553, 21.556, Subsections (b) and (c) of Section 21.081, and Section 22.011 of and adding Section 21.099 and Subsections (d) and (e) of Section 21.251 and Subsections (c), (d), and (e) of Section 21.552 to the Water Code, as amended; repealing Section 21.264, Water Code; providing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Sections 21.003, 21.036, 21.038, 21.064, 21.065, and 21.094, Water Code, as amended, are amended ⁵³ to read as follows:

"Sec. 21.003. Definitions

"As used in this chapter:

"(1) 'Board' means the Texas Water Quality Board.

"(2) 'Executive director' means the executive director of the Texas Water Quality Board.

"(3) 'Water' or 'water in the state' means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

"(4) 'Waste' means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

"(5) 'Sewage' means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

"(6) 'Municipal waste' means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

"(7) 'Recreational waste' means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

"(8) 'Agricultural waste' means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation, agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term 'agricultural waste' does not include tail water or runoff water from irrigation, or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

53. V.T.C.A. Water Code, §§ 21.003, 21.036, 21.038, 21.064, 21.065, 21.094.

"(9) 'Industrial waste' means waterborne liquid, gaseous, or solid substance that results from any process of industry, manufacturing, trade, or business.

"(10) 'Other waste' means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dye-stuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste.

"(11) 'Pollutant' means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term 'pollutant' does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

"(12) 'Pollution' means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

"(13) 'Sewer system' means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

"(14) 'Treatment facility' means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

"(15) 'Disposal system' means any system for disposing of waste, including sewer systems and treatment facilities.

"(16) 'Local government' means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

"(17) 'Permit' means an order issued by the board in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water, and specifying the conditions under which the discharge may be made.

"(18) 'To discharge' includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

"(19) 'Point source' means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

"(20) 'Identified state supplement to an NPDES permit' means any part of a permit on which the board has entered a written designation to indicate that the board has adopted that part solely in order to carry out the board's duties under state statutes and not in pursuance of administration undertaken to carry out a permit

program under approval by the Administrator of the United States Environmental Protection Agency.

"(21) 'NPDES' means the National Pollutant Discharge Elimination System under which the Administrator of the United States Environmental Protection Agency can delegate permitting authority to the State of Texas in accordance with Section 402(b) of the Federal Water Pollution Control Act."

"Sec. 21.036. Copies of Documents, Proceedings, Etc."

"Subject to the limitations of Section 21.038 of this code, on the application of any person, the board shall furnish certified or other copies of any proceeding or other official act of record, or of any map, paper, or document filed with the board. A certified copy with the seal of the board and the signature of the chairman or the executive director is admissible as evidence in any court or administrative proceeding."

"Sec. 21.038. Documents, etc., State Property; Open for Inspection"

"All information, documents, and data collected by the board in the performance of its duties are the property of the state. Records, reports, data, or other information obtained relative to or from sources or potential sources of discharges of water pollutants shall be available to the public during regular office hours; except that, if a showing satisfactory to the executive director is made by any person that such records, reports, data, or other information (other than effluent data) would divulge methods or processes entitled to protection as trade secrets, then the board shall consider such records, reports, data, or other information as confidential. Nothing in this chapter shall be construed to make confidential any effluent data, including effluent data in records, reports, or other information, and including effluent data in permits, draft permits, and permit applications. Any records, data, or other information considered confidential may be disclosed or transmitted to officers, employees, or authorized representatives of the State of Texas or of the United States with responsibilities in water pollution control; provided such disclosure or transmittal is made only after adequate written assurance is given to the executive director that the confidentiality of the disclosed or transmitted records, data, or other information will be afforded all reasonable protection allowed by law by the receiving officer, employee or authorized representative on behalf of, and under the authority of, the receiving agency or political entity. The executive director shall not disclose or transmit records, data, or other information considered confidential if he has reason to believe the recipient will not protect their confidentiality to the most reasonable extent provided by law."

"Sec. 21.064. Power to Enter Property"

"The members, employees, and agents of the board are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the board. Members, employees, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management, or the person then in charge, of his presence and shall exhibit proper credentials. If any member, employee, or agent of the board is refused the right to enter in or on public or private property under this authority, the board may invoke the remedies authorized in Section 21.253 of this code.

"Sec. 21.065. Power to Examine Records

"The members, employees, and agents of the board may examine and copy during regular business hours any records or memoranda pertaining to the operation of any sewer system, disposal system, or treatment facility, or pertaining to any discharge of waste or pollutants into any water in the state, or any other records required to be maintained."

"Sec. 21.094. Monitoring and Reporting

"(a) The board may prescribe reasonable requirements for a person making discharges of any waste or of any pollutant to monitor and report on his activities concerning collection, treatment, and disposal of the waste or pollutant.

"(b) The board may, by regulation, order, permit, or otherwise require the owner or operator of any source of a discharge of pollutants into any water in the state or of any source which is an industrial user of a publicly owned treatment works to:

"(1) establish and maintain such records;

"(2) make such reports;

"(3) sample any discharges in accordance with such methods, at such locations, at such intervals, and in such manner as the board shall prescribe; and

"(4) provide such other information relating to discharges of pollutants into any water in the state or to introductions of pollutants into publicly owned treatment works as the board may reasonably require.

"(c) When in the judgment of the board significant water quality management benefits will result or water quality management needs justify, the board may also prescribe reasonable requirements for any person or persons making discharges of any waste or of any pollutant to monitor and report on the quality of any water in the state which the board has reason to believe may be materially affected by the discharges."

Sec. 2. Section 21.251, Water Code, as amended, is amended by adding ⁵⁴ Subsections (d) and (e) to read as follows:

"(d) Except as authorized by a rule, regulation, permit, or other order issued by the board, or the executive director when authorized by the board, no person may discharge any pollutant, sewage, municipal waste, recreational waste, agricultural waste, or industrial waste from any point source into any water in the state.

"(e) No person may cause, suffer, allow, or permit the discharge from a point source of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter or of any rule, regulation, permit, or other order of the board."

Sec. 3. Section 21.252, Water Code, as amended, is amended ⁵⁵ to read as follows:

"Sec. 21.252. Civil Penalty

"(a) A person who violates any provision of this chapter, other than Subsection (d) or Subsection (e) of Section 21.251, or who violates any rule, regulation, permit, or other order of the board is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, to be recovered as provided in this subchapter.

"(b) A person who violates Subsection (d) or Subsection (e) of Section 21.251 of this chapter is subject to a civil penalty of not more than

54. V.T.C.A. Water Code, § 21.251, subsecs. (d), (e). 55. V.T.C.A. Water Code, § 21.252.

\$10,000 for each act of violation and for each day of violation, to be recovered as provided in this subchapter; provided, however, that in suits instituted pursuant to this subsection, the civil penalty, if any, assessed against the person who committed or who is committing the violation shall be no more than \$1,000 for each act of violation and for each day of violation where the violation is of a limitation or condition included in a permit issued by the board prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act, or of any limitation or condition included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator of the United States Environmental Protection Agency."

Sec. 4. Section 21.253, Water Code, as amended, is amended ⁵⁶ to read as follows:

"Sec. 21.253. Enforcement by Board

"(a) Whenever it appears that a person has violated or is violating, or is threatening to violate, any provision of this chapter, other than Subsection (d) or Subsection (e) of Section 21.251, or has violated or is violating, or is threatening to violate, any rule, regulation, permit, or other order of the board, then the board, or the executive director when authorized by the board, may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

"(b) Whenever it appears that a person has violated or is violating, or is threatening to violate, Subchapter (d) or Subchapter (e) of Section 21.251 of this chapter, then the board, or the executive director when authorized by the board, may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not more than \$10,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty; provided, however, that in suits instituted pursuant to this subsection, the civil penalty, if any, assessed against the person who committed or who is committing the violation shall be no more than \$1,000 for each act of violation and for each day of violation where the violation is of a limitation or condition included in a permit issued by the board prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act, or of any limitation or condition included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator of the United States Environmental Protection Agency.

"(c) Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, permit, or other order of the board, the district court shall grant the injunctive relief the facts may warrant.

"(d) At the request of the board, or the executive director when authorized by the board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty, as authorized in Subsection (a) or (b) of this section."

56. V.T.C.A. Water Code, § 21.253.

Sec. 5. Section 21.552, Water Code, as amended, is amended by adding ⁵⁷ Subsections (c), (d), and (e) to read as follows:

"(c) No person may wilfully or negligently cause, suffer, allow, or permit the discharge from a point source, of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter, or of any rule, regulation, permit, or other order of the board.

"(d) No person may knowingly make any false statement, representation, or certification in any application, notice, record, report, plan, or other document filed or required to be maintained under this chapter, or under any rule, regulation, permit, or other order of the board.

"(e) No person may falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter, or under any rule, regulation, permit, or other order of the board."

Sec. 6. Sections 21.553 and 21.556, Water Code, as amended, are amended ⁵⁸ to read as follows:

"Sec. 21.553. Criminal Penalty

"(a) A person who violates the provisions of Subsection (a) or Subsection (b) of Section 21.552 of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$1,000. Each day that a violation occurs constitutes a separate offense.

"(b) A person who violates the provisions of Subsection (c), (d), or (e) of Section 21.552 is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25,000; provided, however, that violations of limitations or conditions included in permits issued by the board prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402 (b) of the Federal Water Pollution Control Act, or violations of limitations or conditions included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator, shall be punishable by a fine of not less than \$10 nor more than \$1,000. Each day that a violation occurs constitutes a separate offense."

"Sec. 21.556. Venue

"Venue for prosecution of any alleged violation of Section 21.552 is in the county court, the county criminal court, or the county court-at-law of the county in which the violation is alleged to have occurred."

Sec. 7. Section 21.079, Water Code, as amended, is amended ⁵⁹ to read as follows:

"Sec. 21.079. Board May Issue Permits

"(a) The board may issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. No permit shall be issued authorizing the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste. The board may refuse to issue a permit when the board finds that issuance of the permit would violate the provisions of any state or federal law or rule or regulation promulgated thereunder, or when the board finds that issuance of the permit would interfere with the purpose of this chapter.

"(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the board containing all information reasonably required by the board or the executive director.

57. V.T.C.A. Water Code, § 21.552, subsecs. (c) to (e).

58. V.T.C.A. Water Code, §§ 21.553, 21.556.

59. V.T.C.A. Water Code, § 21.079.

"(c) A person may not commence construction of a treatment facility until the board has issued a permit to authorize the discharge of waste from the facility, except with the approval of the board.

"(d) The board may not require under this chapter any permit for the placing of dredged or fill materials into or adjacent to water in the state for the purpose of constructing, modifying, or maintaining facilities or structures, but this does not change or limit any authority the board may have with respect to the control of water quality. The board may adopt rules and regulations to govern and control the discharge of dredged or fill materials consistent with the purpose of this chapter."

Sec. 8. Subsection (b) and Subsection (c), Section 21.081, Water Code, as amended, are amended ⁶⁰ to read as follows:

"(b) After a public hearing, notice of which shall be given to the permittee, the board may require the permittee, from time to time, for good cause, in conformance with applicable laws, to conform to new or additional conditions.

"(c) A permit does not become a vested right in the permittee. After a public hearing in conformance with applicable laws, notice of which shall be given to the permittee, the board may revoke or suspend a permit for good cause on any of the following grounds:

"(1) the permittee has failed or is failing to comply with the conditions of the permit;

"(2) the permit is subject to cancellation or suspension under Section 21.204 of this code;

"(3) the permit or operations under the permit have been abandoned;

"(4) the permit is no longer needed by the permittee;

"(5) the board finds that a change in conditions requires elimination of the discharge;

"(6) revocation or suspension is necessary in order to maintain the quality of water in the state consistent with the objectives of this chapter; or

"(7) the permit was obtained by misrepresentation or failure to disclose fully all relevant facts."

Sec. 9. Chapter 21, Water Code, as amended, is amended by adding ⁶¹ Section 21.099 to read as follows:

"Sec. 21.099. Permit Conditions and Pretreatment Standards Concerning Publicly Owned Treatment Works

"(a) The board shall impose as conditions in permits for the discharge of pollutants from publicly owned treatment works requirements for information to be provided by the permittee concerning new introductions of pollutants or substantial changes in the volume or character of pollutants being introduced into such treatment works.

"(b) The board is authorized to impose as conditions in permits for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by industrial users with any system of user charges required under state or federal law or any regulations or guidelines promulgated thereunder.

"(c) The board is authorized to apply, and to enforce pursuant to Subchapter E of this code, against industrial users of publicly owned treatment works, toxic effluent standards and pretreatment standards for the

60. V.T.C.A. Water Code, § 21.081, subsecs. (b), (c). 61. V.T.C.A. Water Code, § 21.099.

introduction into such treatment works of pollutants which interfere with, pass through, or otherwise are incompatible with such treatment works.”

Sec. 10. Section 22.011, Water Code, is amended ⁶² to read as follows:

“Sec. 22.011. Permit from Board

“No person may continue utilizing a disposal well or begin drilling a disposal well or converting an existing well into a disposal well to dispose of industrial and municipal waste without first obtaining a permit from the Texas Water Quality Board.”

Sec. 11. Section 21.264, Water Code, is repealed.⁶³

Sec. 12.⁶⁴ This Act shall take effect upon full or partial delegation of NPDES permit authority to the board by the Administrator of the United States Environmental Protection Agency pursuant to Section 402 (b) of the Federal Water Pollution Control Act but shall not be construed to affect persons discharging, proposing to discharge or threatening to discharge wastes or pollutants over which the board does not have such delegated NPDES permit authority. In no event, however, shall this Act become effective prior to October 1, 1977. The provisions of this Act shall be effective only during such periods that the board maintains such NPDES permit authority.

Sec. 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 13, 1977, by a non-record vote; and that the House concurred in Senate amendment to H. B. No. 1560 on May 20, by a non-record vote; passed by the Senate, as amended, on May 20, 1977, by a viva-voce vote.

Approved June 15, 1977.

Effective not sooner than Oct. 1, 1977.

CLAIMS AGAINST STATE—APPROPRIATIONS

CHAPTER 645

H. B. No. 1575

An Act making appropriations for and directing payment of certain miscellaneous claims and judgments out of funds designated herein; requiring approval of the claims in the manner specified in the Act before payment is made; providing for severability; repealing laws in conflict; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. The following sums of money are hereby appropriated out of the General Revenue Fund No. 1 for payment of itemized claims and judgments plus interest, if any, against the State of Texas as follows:

To pay Roy M. Wann, Route 1, Canton, Texas 75103, for property damage claim arising out of Texas Department of Public Safety activities\$ 230.00

62. V.T.C.A. Water Code, § 22.011.

64. V.T.C.A. Water Code, § 21.003 note.

63. V.T.C.A. Water Code, § 21.264, repealed.